IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/01/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.23546 OF 2003
23547 TO 23551 OF 2003
AND CRL.M.P.Nos.6677 TO 6684 OF 2003.

T.S.S.Finance Company,
rep.by its Managing Director
T.S.Manohar,
No.10/8, Maruthamalai Main Road,
Kalveerampalayam,
Coimbatore District. .. Petitioner in CrlOP.23546/2003

Sowdeswari Finance,
rep.by its Managing Director
T.S.Manohar,
No.10/8, Maruthamalai Main Road,
Kalveerampalayam,
Coimbatore District. .. Petitioner in CrlOP.23547/2003

SOW Finance,
rep.by its Managing Director
T.S.Manohar,
No.10/8, Maruthamalai Main Road,
Kalveerampalayam,
Coimbatore District. .. Petitioner in CrlOP.23548/2003

Jayasree Investments,
rep.by its Managing Director
T.S.Manohar,
No.10/8, Maruthamalai Main Road,
Kalveerampalayam,
Coimbatore District. .. Petitioner in CrlOP.23549/2003

Samundeeswari Finance Company,
rep.by its Managing Director
T.S.Manohar
No.10/8, Maruthamalai Main Road,
Kalveerampalayam,
Coimbatore District. .. Petitioner in CrlOP.23550/2003

Saraswathi Investments
rep.by its Managing Director
T.S.Manohar

No.10/8, Maruthamalai Main Road,
Kalveerampalayam,
Coimbatore District. .. Petitioner in CrlOP.23551/2003

-Vs-

State by

1.The Deputy Superintendent of Police,
EOW-II, Coimbatore.

2.The Competent Authority and
Additional Commissioner of
Land Administration Department,
Chepauk,
Madras-600 005. .. Respondents in all the CrlOPs.

Criminal Original Petitions filed under Section 482 of the
Code of Criminal Procedure for the relief as stated therein.

For petitioner in : Mr.M.Ravindran,
all the CrlOPs. : senior counsel for
Mr.K.Muthuramalingam

For respondents : Mr.A.N.Thambidurai,
Govt.Advocate (crl.side)

:COMMON ORDER
All the petitioner companies are sister concerns, and all the above criminal original petitions have been filed by their Managing Director, under Section 482 of the Code of Criminal Procedure, respectively praying to call for the records in Cr.Nos.7 to 11 of 2002 on the file of the first respondent and quash the same.

2. On a perusal of the materials placed on record and upon hearing the learned senior counsel for the petitioner and the learned Government Advocate on the criminal side, it comes to be known that the petitioner is the accused in Cr.Nos.7 to 11 of 2002 on the file of the first respondent, registered for the offences punishable under Sections 420,409 IPC and Section 5 of the TNPID Act on allegation that having collected deposits from the depositors, they have not repaid the amounts after maturity and now all the matters are pending investigation and at this stage, the petitioners have come forward to file all the above criminal original petitions seeking to quash them.

3. In the similar affidavits filed in support of the above criminal original petitions, the Managing Director of all the petitioner companies would submit that excepting Sowdambiga Finance Chits Private Limited, which has been registered under the Companies Act, 1956, all other

companies are registered under the Partnership Act, 1932 and they are doing business at Coimbatore, Tiruppur, Salem, Trichy, Madurai and Thuraiyur; that the petitioner companies are the pioneer chit fund operators for more than 35 years and subsequently in the year 200 0, the said firms were converted into Private Companies and registered under the provisions of the Companies Act, 1956 in the Office of the Registrar of Companies, Coimbatore.

4. The petitioner would further submit that during the course of 1986-1990, all the sister concerns were started and deposits were accepted from various depositors and carried on with the business in an unblemished manner; that during the years 1997-2000, there were general restrictions in some of the finance business which led to the closure of huge finance establishments and the corresponding amendment in the Reserve Bank of India Regulations, developed panic among the investing public and under lot of pressure on the petitioner companies also in the return of the deposits even before maturity period in the conditions prevalent, the petitioner companies could not make the payment to the pre-mature deposits; that the petitioner company accepted deposits to the tune of Rs.22 crores and out of the deposits accepted, the petitioner company had to repay around 3000 to 3500 depositors to the tune of Rs.13 crores till the year 2001 and there was a delay in the payment to 2000 depositors whose deposits were pre-mature and the said amount was Rs.9.8 crores and this situation paved the way to penal action under the TNPID Act and the first respondent registered the cases under Sections 409 and 420 IPC and under Section 5 of the TNPID Act against the petitioner companies.

5. The petitioner would further submit that they are repaying the deposits till 15.6.2002 and since the petitioner was arrested on 16.2.2002, they were not in a position to repay the entire dues; that had the first respondent not interfered with, the petitioner would have paid the entire amount due to the depositors; that it is relevant to be noted that from out of Rs.13 crores earlier settled by the petitioner, many of the deposits were pre-mature deposits; that the second respondent in exercise of his powers conferred under Section 5 of the TNPID Act, attached the properties belonging to the petitioner companies by G.O.Ms.No.182, dated 6.3.2002, G.O.Ms.No.363, dated 29.4.2002 and G.O.Ms.No.880 dated 23.9.2002; that as on date, the total amount by way of fixed deposits and cash certificates to be repaid are Rs.9,8 1,60,499/= and the total amount by way of chit amount to be repaid is Rs.5,11,24,249.05 only.

6. The petitioner would further submit that due to mala fide and arbitrary actions of the first respondent police and by exercising the powers conferred under the TNPID Act, the interim attachments made by the second respondent, have collapsed the petitioner companies in repaying the depositor amounts; that the present market value of the assets of the petitioner companies is more than Rs.35 crores as against the total amount to be repaid i.e. Rs.14 crores which, compared with the value of the assets owned by the petitioner companies is not a big amount for repayment and by the drastic action taken by the respondents, not only the petitioners companies collapsed but also the depositors have been stranded in the streets; that from 1.6.2003 onwards, the petitioner companies have started negotiations with the depositors association of Coimbatore and the other branches and arrived at a

settlement to repay the deposited amount and accordingly, in Coimbatore branch alone, the petitioner companies have repaid nearly a sum of Rs.1 crore after negotiating with the depositors from 1.6.2003 till date; that due to the registration of the criminal case by the first respondent, not only a panic was created but also by the sealing of the petitioners companies, they have to hold the negotiations and settlement meetings in the common places; that there are borrowers, who have borrowed loans from the petitioner companies to the tune of Rs.6 .5 crores by means of loans and mortgages, the documents of which are kept in the office premises of the petitioner company and on account of the non-availability of the same, the petitioner companies could not take any action against the borrowers for which the respondents stand an obstacle.

7. The petitioners, ultimately assuring that, given the opportunity, within a period of six months, they will be definitely able to repay the entire due amount to the depositors by way of arranging funds by mortgaging the properties and on such assurance, would ultimately pray to the relief extracted supra.

8. In consideration of all the facts and circumstances of the case, having regard to the materials placed on record it comes to be known that penal action was initiated against the petitioners by the first respondent since the petitioners have not repaid the matured amount to the depositors, which works out to Rs.14 crores. It further comes to be known that the petitioner companies are owning the properties worth more than Rs.35 crores and because of the initiation of the penal proceedings by the first respondent and interim attachment of the properties made by the Government, under Section 3 of the TNPID Act, the petitioners are not in a position to gain access to their properties or to repay any amount to the depositors as a result of which the interest of the depositors is at stake. Further it comes to be known that though by virtue of the orders of the Government, the properties have been attached and vested with the second respondent, he never acted in the manner required under law to do anything constructively.

9. During the course of arguments, the learned senior counsel for the petitioners would submit that had the first respondent not interfered with the affairs of the petitioners firms, definitely the petitioners would have repaid all the amounts to the depositors and from 1.6 .2003 onwards, the petitioner companies have started negotiations with the depositors association of Coimbatore and the other branches and arrived at a settlement to repay the deposited amount and accordingly, in Coimbatore branch alone, the petitioner companies have repaid nearly a sum of Rs.1 crore and due to the registration of the criminal case by the first respondent, not only a panic was created but also by the sealing of the petitioners companies, they have to hold the negotiations and settlement meetings in the common places and would assure the Court that given the opportunity, within a period of six months, the petitioners would be definitely able to repay the entire due amounts to the depositors by way of arranging funds by mortgaging the properties. The learned senior counsel for the petitioners would also produce the copies of statement of accounts thereby showing the number of debtors to the company and the properties the petitioners company owns.

10. From this backdrop, this Court is of the view that in the

best interest of the depositors, instead of quashing the criminal proceedings as sought for in the above criminal original petitions, a scheme framed by keeping the G.O.Ms.No.182 Home (Courts II A) Department, dated 6.3.2002 and G.O.Ms.No.363 Home (Courts IIA) Department, dated 29 .4.2002 and G.O.Ms.No.880 dated 23.9.2002 in abeyance till the time that the entire dues to the depositors are settled by the petitioners company, would meet the ends of justice and hence the following order:
In result,
(I) all the above criminal original petitions, insofar as the prayer to quash the criminal proceedings is concerned, are dismissed.
(II) However, since the further proceedings in the criminal prosecution is likely to hamper the settlement proceedings, all further proceedings in Cr.Nos.7 to 11 of 2002 on the file of the first respondent are stayed till the finalisation of the administrative proceedings.

(III) Mr.A.S.Muthusamy, District and Sessions Judge (Retired) and a practicing Advocate now, residing at No.258/9, Swathi Apartments, East Main Road, Anna Nagar West Extension, Chennai-101 is hereby appointed the Administrator of all the petitioner companies.

(IV) The management of all the petitioner companies and the Welfare Association of Depositors and Chit Members of petitioner Group of Companies, shall nominate each two members to assist the Administrator in the affairs of the companies. The nominees of the management shall not be the accused in the above cases.
(V) G.O.Ms.No.182, dated 6.3.2002, G.O.Ms.No.363, dated 29.4.2002 and G.O.Ms.No.880 dated 23.9.2002 are stayed and the second respondent is directed to hand over all the properties of the petitioner group of companies to the Administrator.
(VI) The Administrator shall have his office at Coimbatore with his own staff members, to be appointed if need be, not exceeding three in number, and he shall have the powers on behalf of the petitioner group of companies to:
(a) open bank accounts, remit cash, cheque or demand drafts with the Banks;
(b) receive cash and cheques/demand drafts
(c)issue notices to persons for the purposes of securing moneys due to the group of companies;
(d) recommend and initiate action for recovery of amounts due to the petitioner group of companies;
(e) appoint auditors, charted accountants and financial consultants on adhoc basis,
(f) carry out such other incidental and ancillary acts that may be required and deemed fit by the committee for effectively carrying out the Scheme
(g) apply for and/or carryout such directions as the Court may give from time to time.

(VII) The Administrator shall form a committee with the nominees of the management and the depositors association, as stated above, himself being its Chairman and the said Committee shall assist the Administrator in the performance of the following functions:
(a) The primary duty of the Committee shall be to endeavour to effect

recoveries of the amounts due to the group of companies and to sell the properties of the group of companies for distribution among the depositors. To reach the said end, the Committee shall:
(b) ascertain the names of the depositors in the group of companies, the nature of deposits and the amounts due under the respective deposits,
(c) ascertain the amounts due to the group of companies and ascertain the assets and liabilities of the group of companies,
(d) take an inventory of movables including office equipments, furniture, motor vehicles etc.,
(e) prepare a schedule of immovable properties belonging to the group of companies or held in the names of persons but purchased out of the funds realised through the depositors,
(f) prepare a list of employees that may have to be employed and their terms of employment
(g) pay salareis to employees, taxes to local bodies and rents, if any.
(VIII) The petitioners shall, for the purpose of carrying out the provisions of the scheme:
(a)permit the Committee to have access to records, accounts, documents etc. of any of the companies;
(b) give the list of properties both movable and immovable to the Committee;
(c)give the list of outstandings due to any of the group of companies together with names and addresses of debtors of the companies to the Committee;
(d) provide list of creditors with their names and addresses to the Committee and
(e) assist the Committee in the realisation of outstandings/sale proceeds.
(IX) The Committee shall always secure the previous sanction of the Court to
(a) confirm sale,
(b) to incur expenses more than Rs.10,000/=.
(c) to appoint or dismiss or alter the conditions of employees of the group of companies.
(d) institute suits for recovery of money due to any group company and
(e) distribution of the proceeds of assets towards the satisfaction of the claims of the depositors.

(X) The petitioner group of companies shall not advertise, solicit, accept or renew depositors till the court certifies the conclusion of administration proceedings.

(XI) It shall be the endeavour of the Committee to realise the amounts due to the group of companies and to sell the assets as expeditiously as possible, accumulate the sums and settle 100% of the claims of the depositors within a period of six months from the date of receipt of a copy of this order or as early as possible or such time that may be extended by the Court, provided always it may secure the sanction of the Court for making interim payments to the general advantage and general interest of the depositors.

(XII) The Administrator shall be paid with a sum of Rs.25,000/= (Rupees Twenty Five Thousand Only) per month as his remuneration and he is also entitled to get reimbursement for his lodging and boarding facilities at Coimbatore or in whatever place he visits for the purpose of administering the

affairs of the company as aforementioned, besides being entitled for first class or equivalent train facility for his travel during the course of his discharge of duties as administrator.

(XIII) The Administrator is also at liberty to fix salaries for his three staff members, if appointed, not exceeding Rs.5,000/= per month per employee. The said expenses are to be borne from out of the funds of the petitioners groups of companies.
(XIV) In any matter, the decision of the Administrator shall be final.

(XV) The Administrator can make use of the office premises of the petitioners at Coimbatore along with phone, fax etc. and the office expenses shall be borne from out of the funds of the petitioner companies.

(XVI) The initial expenses for the establishment of the office by the Administrator and his lodging and boarding including his travel shall be borne by the petitioners.

(XVII) The Administrator shall submit his reports to this Court regarding the work done, every month.
(XVIII) The jurisdiction police and the first respondent, if approached by the learned Administrator, shall extend their full cooperation for the successful implementation of the Scheme.
Post the above matters on 9.3.2004 for further proceedings.

Index: Yes
Internet: Yes

Rao

To
1.The Deputy Superintendent of Police,
EOW-II, Coimbatore.

2.The Competent Authority and
Additional Commissioner of
Land Administration Department,
Chepauk,
Chennai-5.

3.Mr.A.S.Muthusamy,
District Judge (Retired),
No.258/9, Swathi Apartments,
East Main Road,
Anna Nagar West Extension,
Chennai-101

4.The Public Prosecutor,
High Court,
Madras.